IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sanjay Khanna Vs. State of Haryana

Present : Mr.Ashish Aggarwal, Advocate, for the petitioner.
Mr.Deepak Girotra, AAG, Haryana.

Prayer in this petition is, for setting aside the order dated 25.2.2005, whereby the petitioner has been summoned to stand trial, alongwith the already arraigned accused, pursuant to an order passed under Section 319 Cr.P.C. by the Chief Judicial Magistrate, Karnal.

Counsel for the petitioner contends that the petitioner was not named in the FIR, nor in any statement recorded under Section 161 Cr.P.C. or in the challan filed. No role was attributed to him as regards the commission of any offence. The learned trial Court, upon receipt and perusal of the challan, did not summon the petitioner as there was no material on record. It is contended that in view of the aforementioned facts, the learned trial Court could not have summoned the petitioner by passing an order under Section 319 of the Cr.P.C.

It is further contended that the petitioner has been summoned pursuant to the deposition of PW-1 Surinder Kumar Malhotra. In the aforementioned statement, PW-1 merely alleges that the petitioner, who is the owner of Khanna Locks, colluded with the other accused, one of whom was his employee, to commit theft. In the absence of any evidence of collusion or conspiracy or any circumstance to suggest such collusion or conspiracy, the learned trial Court erred in summoning the petitioner. It is contended that the learned trial Court, while summoning the petitioner, lost sight of the basic principles that govern the exercise of jurisdiction under Section 319 Cr.P.C. The impugned order does not disclose a process of reasoning, much less assigns any reason for summoning the petitioner. The learned trial Court was required to examine the evidence/material on record and thereafter, arrive at a conclusion that the petitioner had committed an offence, for which he could be tried alongwith the already arraigned accused

and upon appraisal of the material on record, the Court was hopeful that there was a reasonable prospect of the case against the newly added accused ending in conviction. The power to summon an accused, under Section 319 Cr.P.C. is to be exercised sparingly and not on mere demand. Reliance for the above contention is placed upon judgement of Hon'ble the Supreme Court reported as **Michael Machado & another V. Central Bureau of Investigation & Another,** 2000(2) RCR (Crl.) 75 and a judgement of this Court reported as **Surinder Kumar V. State of Punjab,** 2006(2) RCR (Crl.) 359.

Counsel for the State of Haryana, on the other hand submits that the impugned order does not suffer from any illegality. The learned trial Court was well within its rights, to have summoned the petitioner, as the statement of PW-1 implicates the petitioner. The mere fact that the petitioner was not named in the FIR, in the statements recorded under Section 161 Cr.P.C. or in the challan are irrelevant. The trial Court is only required to take into consideration the evidence recorded during the course of the trial.

I have heard learned counsel for the parties and perused the record.

A perusal of the impugned order in my considered opinion does not reveal a judicious/judicial exercise of discretion. It is not denied that the petitioner's name does not figure in the FIR or in any statement made by the complainant or his witnesses under Section 161 Cr.P.C. The petitioner's name does not find mention in the challan. The petitioner has been summoned, on the basis of a statement made, by PW-1 Surinder Kumar Malhotra, Advocate. At this stage, a brief reference to the merits of the controversy would be necessary.

In his statement recorded as PW-1 Surinder Kumar Malhotra, Advocate, the complainant deposed that in April 2003, he had let out his servant quarter for residence to a lady named Draupdi, her daughter Bindu and a boy. Bindu used to look after the complainant's grand daughter. On 24.7.2003, the complainant's son and daughter-in-law left for Delhi after locking the doors. Bindu and her mother were requested to look after the house. They had gone to Delhi to pick up the complainant and his wife.

They returned after midnight and found the main door open. The locks on the bed room doors and cupboards in the complainant's son's room were found broken. Three watches, about 18-20 tolas of gold ornaments, about ten thousand rupees in cash, clothes of dowry of the complainant's daughter-in-law and other articles were found missing. Bindu, however, was untraceable. It was deposed that Bindu had committed theft alongwith her associate by breaking the locks. The deposition then recounts Bindu's confessional statement before the police, recovery of articles etc. It is specifically deposed that theft was committed by Bindu alongwith Bule Singh, accused, who was a servant of Sanjay Khanna, owner of Khanna Locks, Municipal Committee Chowk, Karnal (the petitioner herein). Sanjay Khanna and his servant Bule Singh colluded with Bindu, accused, who broke open the locks etc. and got the theft committed. It is further deposed that police intentionally left Sanjay Khanna out of the case and did not initiate any proceedings against him.

The Public Prosecutor thereafter, filed an application dated 29.9.2004, praying that in view of the deposition of PW-1, Surinder Kumar Malhotra, Advocate, Sanjay Khanna, the petitioner be also summoned to face trial.

The learned Trial Court, vide order dated 22.2.2005, the order impugned herein, summoned the petitioner.

The impugned order, after referring to the application under Section 319 Cr.P.C and making a perfunctory reference to the deposition of PW-1, Surinder Kumar Malhotra, reads as follows :-

> "Hence, in these circumstances, I am of the considered view that there is sufficient prima facie evidence on record to summon accused Sanjay Khanna to face trial alongwith co-accused. Accordingly, notice be issued to accused Sanjay Khanna for 6.5.2005."

The first contention raised by counsel for the petitioner, namely; that as the petitioner was not named in the FIR, the statements recorded under Section 161 Cr.P.C. and the challan, he could not be summoned, cannot be accepted as a correct exposition of the jurisdiction,

conferred upon a Court, under Section 319 Cr.P.C. Each case, has to be decided on its own peculiar facts. The mere fact that an accused sought to be summoned, is not named in the FIR, the statements recorded under Section 161 Cr.P.C. or the challan, cannot be the sole circumstance to decline summoning of such an accused, as otherwise, a Court would be bound by the conclusion arrived at by the prosecution. However, this does not absolve a Court, in the discharge of its statutory obligation, to examine the matter in accordance with the well established principles of law as enunciated in Michael Machado's case (supra), wherein while considering the parameters, within which, powers under Section 319 Cr.P.C., are to be exercised, the Hon'ble Supreme Court held as follows:-

> "11. The basic requirement for involving the above Section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well as tried alongwith the already arraigned accused.
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> 12. But even then, what is conferred on the Court is only a discretion as could be discerned from the words "the Court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the

> trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against other persons.
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> 14. The Court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub-section(4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be recommenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them on order to reach the stage where it had reached earlier. If the witnesses already examined are quite large in number the Court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the Court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the Court should refrain from adopting such a course of action."

A perusal of the statutory provisions of Section 319 Cr.P.C., as also the judgements referred to herein above, make it abundantly clear that while considering an application under Section 319 of the Code, a Court is required, to record a reasonable satisfaction that the evidence on record is sufficient to warrant a finding that the accused, sought to be summoned under Section 319 of the Code must be arraigned alongwith the accused already facing trial. The Court is not bound to summon an accused on a mere demand of the prosecution. The Court should also be hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction for the offences complained of. The said

course would obviously involve a judicial exercise taking the entire case into consideration. This Court in **Surinder Kumar V. State of Punjab,** 2006(2) RCR (Crl.) 359 has held as follows :-

> "The words "reasonable satisfaction" are not emply platitudes but are words that define the jurisdiction of a Court exercising jurisdiction under Section 319 of the Code. These words inhere in them, a duty, to record judicial satisfaction. The order must disclose howsoever briefly, the reasons that led the Court to record a finding in terms of the powers conferred upon it under Section 319 of the Code. A Court is also required to examine the material, as held in Michael Machado's case (supra), with a view to prima facie discern as to whether there is a reasonable prospect of the case, as against the persons sought to be summoned, ending in conviction. The powers under Section 319 of the Code are not to be exercised mechanically or on demand but on the principles of law referred to in the judgements noticed herein before."

A perusal of the impugned order reveals that the trial Court failed to exercise jurisdiction, in accordance with the provisions of Section 319 Cr.P.C. The operative part of the impugned order, as reproduced herein before, apart from recording that there is sufficient prima facie evidence to summon the accused to face trial, does not assign any reason for this prima facie satisfaction. The impugned order does not set out reasonable satisfaction judicial or otherwise, as to why the petitioner should stand trial alongwith the other accused. In my considered opinion, the order has been passed mechanically, does not disclose a process of reasoning or assign any reasons, for summoning the petitioner and discloses a failure to exercise jurisdiction in accordance with law..

In view of what has been stated herein above, as the impugned order suffers from an error of jurisdiction, the present petition is allowed. The order dated 25.2.2005 is setaside and the matter is remitted to the trial Court for a decision afresh on the application filed under Section 319

Cr.P.C. after taking into consideration the evidence/material on record.

The present petition stands disposed of accordingly.

7.9.2006 (RAJIVE BHALLA)
GS JUDGE